

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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| IN THE MATTER OF: |) | |
| |) | |
| White Pine School District |) | Administrative Consent Order |
| White Pine, Michigan |) | |
| |) | EPA-5-99-113(a) MI-8 |
| Proceeding Under Sections |) | |
| 113(a)(3) and 114(a)(1) of |) | |
| the Clean Air Act, 42 U.S.C. |) | |
| §§ 7413(a)(3) and 7414(a)(1) |) | |

Administrative Consent Order

1. The Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, is issuing this Order to White Pine School District under Sections 113(a)(3) and 114(a)(1) of the Clean Air Act (Act), 42 U.S.C. §§ 7413(a)(3) and 7414(a)(1).

Statutory and Regulatory Background

2. The Administrator of U.S. EPA may promulgate regulations establishing National Emission Standards for Hazardous Air Pollutants (NESHAP) under Section 112 of the Act, 42 U.S.C. § 7412.

3. Under Section 112 of the Act, the Administrator promulgated the NESHAP for asbestos emissions at 40 C.F.R. Section 61, Subpart M. The NESHAP for asbestos emissions applies to the emission, handling, and disposal of asbestos.

4. The NESHAP, at 40 C.F.R. § 61.145(a), requires the owner and operator of an asbestos demolition or renovation activity to thoroughly inspect the area for the presence of asbestos prior to commencing the demolition or renovation activity.

5. The NESHAP, at 40 C.F.R. § 61.145(b), requires the owner and operator of an asbestos demolition or renovation activity to provide the U.S. EPA with written notice of its intention to renovate at least ten (10) working days before asbestos stripping or removal work or any other activity begin. The owner or operator of a renovation activity in Michigan may satisfy this

requirement by providing the Michigan Department of Environmental Quality with written notice of intention to renovate.

6. The NESHAP, at 40 C.F.R. § 61.145(c)(1), requires the owner and operator of an asbestos demolition or renovation activity to remove all regulated asbestos-containing materials from the school building being renovated before any activity began that would break up, dislodge, or similarly disturb the material.

7. The NESHAP, at 40 C.F.R. § 61.145(c)(6), requires the owner and operator of an asbestos demolition or renovation activity to adequately wet all regulated asbestos-containing materials and ensure that the material remain wet until collected and contained or treated in preparation for disposal.

8. The NESHAP, at 40 C.F.R. § 61.145(c)(8), provides that no regulated asbestos-containing material shall be stripped, removed or otherwise handled or disturbed at a facility that is subject to the requirements of 40 C.F.R. § 61.145 unless at least one on-site representative (such as a foreman or management-level person or other authorized representative) who is properly trained in the provisions of the asbestos NESHAP and the means of complying with such provisions, is present.

9. The NESHAP, at 40 C.F.R. § 61.150(a)(1), requires the owner and operator of an asbestos demolition or renovation activity to seal the asbestos containing material in leak-tight containers while wet.

10. The NESHAP, at 40 C.F.R. § 61.150(b), requires the owner and operator of an asbestos demolition or renovation activity to deposit all asbestos containing waste material as soon as practical at an U.S. EPA approved disposal site.

11. Under Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), the Administrator of U.S. EPA may issue an order requiring compliance to any person who has violated or is violating the NESHAP regulations. The Administrator has delegated this authority to the Director of the Air and Radiation Division.

12. The Administrator of U.S. EPA may require any person who is subject to any requirement of the Act to provide information required by the Administrator under Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Air and Radiation Division.

Findings

13. White Pine School District owns and operates a school building at 71 Tamarack Street, White Pine, Ontonogan County, Michigan.

14. White Pine School District conducted a "renovation" activity within the meaning of 40 C.F.R. § 61.141 at this school building during the summer of 1996 and the summer of 1997. This renovation activity included removal of ceiling tiles, which were friable or which had a high probability of becoming crumbled, pulverized, or reduced to powder by the forces expected to act on the ceiling tiles in the course of the renovation. Laboratory analysis of samples taken from the ceiling tiles indicated that the samples contained more than one percent asbestos. White Pine School District stripped, removed, dislodged, cut, drilled, or disturbed in the renovation activity at the school building at least 80 linear meters (260 linear feet) of pipe insulation, or at least 15 square meters (160 square feet) on other facility components, or 1 cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously. Therefore, White Pine School District was subject to the NESHAP for asbestos emissions at 40 C.F.R. Part 61, Subpart M.

15. White Pine School District owns or operates an "emission source" within the meaning of Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1). Therefore, White Pine School District is subject to the requirements of Section 114(a)(1).

16. White Pine School District violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(a) by failing to thoroughly inspect the area of the White Pine Elementary School where the renovation activity was to occur for the presence of asbestos prior to commencing the renovation activity referred to above.

17. White Pine School District violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(b) by failing to provide the U.S. EPA with written notice of its intention to renovate at least ten (10) working days before asbestos stripping or removal work or any other activity began.

18. White Pine School District violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(c)(1) by failing to remove all regulated asbestos-containing materials from the school building being renovated before any activity began that would break up, dislodge, or similarly disturb the material.

19. White Pine School District violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(c)(6) by failing to adequately wet all regulated asbestos-containing materials and ensure that the material remained wet until collected and contained or treated in preparation for disposal.

20. White Pine School District violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.145(c)(8) by failing to have present during the renovation at least one on-site representative (such as a foreman or management-level person or other authorized representative) who was properly trained in the provisions of the asbestos NESHAP and the means of complying with such provisions.

21. White Pine School District violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.150(a)(1) by failing to seal the asbestos containing material in leak-tight containers while wet.

22. White Pine School District violated the NESHAP for asbestos emissions at 40 C.F.R. § 61.150(b) by failing to deposit all asbestos containing waste material as soon as was practical at an U.S. EPA approved disposal site.

Compliance Program

23. Hereafter, White Pine School District must achieve, demonstrate, and maintain compliance with the NESHAP for asbestos emissions at its White Pine, Michigan school building.

24. White Pine School District must hereafter thoroughly inspect the school building or any part of the school building for the presence of asbestos or asbestos containing material prior to the commencement of any demolition or renovation activity.

25. White Pine School District must hereafter timely submit notices of intent to demolish or renovate to the appropriate State and regional contacts (as required by the State) and to the U.S. EPA. Notices sent to the U.S. EPA should be addressed to:

Andrew Bielanski
Air Enforcement and Compliance Assurance Branch
Mail Code AE-17J
United States Environmental Protection Agency
Region 5
77 West Jackson Boulevard

Chicago, Illinois 60604

26. Any authorized representative of the U.S. EPA or of the Michigan Department of Environmental Quality, Air Quality Division (including a designated contractor) may, upon presentation of credentials, and without prior notice, enter any facility owned or operated by the White Pine School District at any time during which a demolition or renovation operation is being conducted, to determine compliance with the requirements of the Clean Air Act, the asbestos NESHAP, and provisions of this Order. Such authorized representative may take samples and photographs and inspect and copy such records as U.S. EPA may deem necessary. The inspection authority created under this paragraph is in addition to, and does not in any way limit, U.S. EPA's authority to investigate, inspect, or enter premises pursuant to any laws, permits, or regulations, including but not limited to any premises owned by White Pine School District.

27. White Pine School District must submit a written report within thirty (30) days of the completion of any demolition or renovation operation certifying that White Pine School District has complied fully with provisions of paragraphs 24 and 25. Alternatively, if White Pine School District has failed to comply with the provisions of paragraphs 24 and 25, White Pine School District must provide a detailed description of each instance of its failure to comply, including the reasons for such failure to comply. White Pine School District shall include the following information in the Report:

- a. The amount of asbestos removed;
- b. The name and address of the licensed abatement contractor which performed the asbestos removal; or if an abatement contractor is not used, the names and addresses of the entities and/or individuals that performed the asbestos removal, including the name and address of the person who satisfies the requirements of 40 C.F.R. § 61.145(c)(8);
- c. Copies of the training credential of the person named in paragraph 27.b. above who satisfies the requirements of 40 C.F.R. § 61.145(c)(8); and
- d. Copies of waste shipment records satisfying the requirements of 40 C.F.R. § 61.150(d) and signed by the owner or operator of the designated disposal site, as evidence of the proper disposal of the asbestos removed.

28. Any notice, report, or other document submitted by White Pine School District pursuant to this Order, which makes

any representation concerning White Pine School District's compliance or noncompliance with any requirement of this Order, shall be certified by a responsible official of the White Pine School District. The certification of such responsible official shall be in the following form: **"I hereby certify that the information contained in or accompanying this submission is true, accurate and complete to the best of my knowledge, information and belief."**

29. White Pine School District must send all reports required by this Order to:

Attention: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

SPECIAL REQUIREMENTS

30. Respondent agrees that, until such time as all asbestos-containing material is removed from the closed-off area of the White Pine Elementary School, the White Pine School District shall prohibit and prevent access to such area by students, and shall post a warning sign at such area. The warning sign required under this paragraph must be prominent both in size and bright color, and must contain the following words:

**CAUTION: DO NOT ENTER. CONTAINS ASBESTOS. HAZARDOUS.
DO NOT DISTURB WITHOUT PROPER TRAINING AND EQUIPMENT.**

31. Respondent agrees that, during any periodic surveillance of the closed-off area of the White Pine Elementary School required under Federal law, Respondent shall specifically note whether any RACM or suspected asbestos-containing material was removed from the area.

32. Respondent agrees that, in the White Pine School District's annual newsletter, it shall post a warning to the effect that no one is allowed to enter the closed-off area of the White Pine Elementary School. Such warning shall also be made at the beginning of the school year and at least once during every ninety (90) day period thereafter to all employees, including but not limited to administrators, teachers, administrative assistants, custodial workers, cooks, and summer student

employees.

33. Respondent agrees that, in addition to having the school superintendent attend the two (2) hour asbestos awareness training, the White Pine School District shall arrange for another school official, such as a member of the school board or a member from the parent/teacher association (PTA), to attend the two (2) hour asbestos awareness training. Attendance at the two (2) hour asbestos awareness training by the individuals identified herein must take place withing one-hundred and twenty (120) days of the effective date of this Order.

34. Respondent agrees that, at least once during the life of this Order, Respondent shall provide a presentation concerning the White Pine School District's asbestos management plan during a meeting attended by the parents of students. This presentation shall be made by an outside consultant, and shall be made within ninety (90) days of the effective date of this Order.

35. Respondent agrees that, within sixty (60) days of the effective date of this Order, the White Pine School District shall develop and implement an environmental and safety education program for the students of the White Pine Elementary School and the White Pine High School, concerning the hazards of asbestos.

General Provisions

36. This Order does not affect White Pine School District's responsibility to comply with other local, State, and Federal laws and regulations.

37. This Order does not restrict U.S. EPA's authority to enforce Section 112 of the Act, or any other Section of the Act.

38. Nothing in this Order limits U.S. EPA's authority to seek appropriate relief, including penalties under Section 113 of the Act, 42 U.S.C. § 7413, for White Pine School District's violation of the NESHAP for asbestos.

39. Failure to comply with this Order may subject White Pine School District to penalties of up to \$27,500 per day for each violation under Section 113 of the Act, 42 U.S.C. § 7413.

40. The terms of this Order are binding on White Pine School District, its officers, directors, agents, employees, assignees, authorized representatives, and successors. White Pine School District must give notice of this Order to any

successors in interest, prior to transferring ownership, and must simultaneously verify to U.S. EPA, at the above address, that White Pine School District has given the notice.

41. This Order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 et seq., because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.

42. U.S. EPA may use any information submitted under this Order in an administrative, civil or criminal action.

43. Respondent, White Pine School District, agrees to the terms of this Order. It is understood between the parties that, in signing this Order and agreeing to the terms and conditions set forth herein, Respondent makes no admission of liability for the violations alleged herein. Furthermore, it is expressly understood between the parties that this Order pertains only to the matters identified herein, and shall not be construed as an admission of fault or liability as to any claim or proceeding which exists or may arise and be pursued by any person, agency or entity other than the United States. Notwithstanding the foregoing, should Respondent fail to comply with any provision contained in this Order, Respondent waives any rights it may possess in law or equity to challenge the authority of the U.S. EPA to bring a civil action in the appropriate United States District Court to compel compliance with this Order. With respect to any such civil action brought by U.S. EPA to compel compliance with this Order, Respondent waives any defenses as to jurisdiction and venue, and waives its right to a judicial or administrative hearing on any issue of law or fact set forth in this Order. Respondent's agreement to waive the defenses described herein shall apply only to actions brought by U.S. EPA, or by the United States at the request of U.S. EPA, to compel compliance with this Order, and shall not be construed as a waiver of any defense to actions brought by persons who are not parties to this Order.

44. This Order is effective on the date of signature by the Director of the Air and Radiation Division. This Order will expire one year from the effective date, if White Pine School District has complied with all of its terms and conditions. Within three-hundred (300) days of the effective date of this Order, Respondent shall submit to U.S. EPA a compliance report, certified as correct by a responsible official of the White Pine School District, attesting to Respondent's compliance with each of the terms and conditions of this Order. Should Respondent fail to submit the compliance report described herein, this Order

shall remain effective until such compliance report is provided to U.S. EPA in accordance with the terms of this Order and U.S. EPA issues to Respondent a letter confirming that compliance with this Order has been achieved.

45. White Pine School District agrees to bear its own costs and attorneys' fees in this matter, and U.S. EPA agrees to bear its own costs and attorneys' fees in this matter.

9/28/99
Date

John D. Valesano
John D. Valesano
Superintendent
White Pine School District

10/7/99
Date

Margaret M. Guerriero
Margaret M. Guerriero,
Acting Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Shanee Rucker, certify that I sent the Administrative Consent Order, EPA Order No. EPA-5-99-113(a) MI-8, by Certified Mail, Return Receipt Requested, to:

John D. Valesano, Superintendent
White Pine School District
71 Tamarack Street
White Pine, Michigan 49971

I also certify that I sent a copy of the Administrative Consent Order, EPA Order No. EPA-5-99-113(a) MI-8, by First Class Mail to:

Brian Brady, Supervisor
Michigan Department of Environmental Quality
Air Quality Division, Marquette District
1990 U.S. 41 South
Bay City, Michigan 49855

Philip A. Erickson
Thrun, Maatsch and Nordberg, P.C.
Suite 500
501 South Capitol Avenue
P.O. Box 40699
Lansing, Michigan 48901-7899

on the 8 day of October 1999.

Shanee Rucker
Shanee Rucker, Secretary
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: P 564 485 673